



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು
ವಿಶೇಷ ರಾಜ್ಯ ಪತ್ರಿಕೆ

ಭಾಗ - ೩ Part - III	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ೨೫, ಫೆಬ್ರವರಿ, ೨೦೨೧ (ಫಾಲ್ಗುಣ, ೦೬, ಶಕವರ್ಷ, ೧೯೪೨) BENGALURU, THURSDAY, 25, FEBRUARY, 2021 (Phalguna, 06, SHAKAVARSHA, 1942)	ನಂ. ೨೦೭ No. 207
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PERSONNEL AND ADMINISTRATIVE REFORMS SECRETARIAT

NOTIFICATION

No.DPAR 01 CHUTHAA 2021, Bengaluru, Dated: 24th February, 2021.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi.

Dated: 1st February, 2021

12 Magha, 1942 (Saka)

NOTIFICATION

No. 82/KT-LA/200002/2018:- In pursuance of section 106(b) of the Representation of the People Act, 1951(43 of 1951), the Election Commission of India hereby publishes the judgement/orders of the High Court of Karnataka dated 28.09.2020 in the Election Petition No.200002 of 2018 on the I.A.No. 5/2019, I.A.No. 6/2019 and I.A.No. 3/2020.

E.P.No.200002/2018

IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH

DATED THIS THE 28TH DAY OF SEPTEMBER 2020

BEFORE

THE HON'BLE MRS.JUSTICE K.S.MUDAGAL

ELECTION PETITION No.200002/2018

BETWEEN:

SRI BASANAGOUDA TURVIHAL
S/O SRI SOMALINGAPPA
AGED ABOUT 55 YEARS
R/AT TURVIHAL
SINDANOOR TALUK-584 132
RAICHUR DISTRICT

...PETITIONER

(BY SRI SANTOSH S GOGI, ADVOCATE)

AND:

1. SRI PRATAPAGOUDA PATIL
S/O SRI NARASANAGOUDA
MAJOR
R/AT NO.2/2/29, "PREETI NILAY"
KILLA MASKI, MASKI TALUK
DISTRICT RAICHUR-584 224
2. SRI RAJASOMANATH NAYAK
S/O SRI RAJA AMARAPPA NAYAK
MAJOR
R/AT GURGUNTA POST
TALUK LINGASUGUR
DISTRICT RAICHUR-584 122
3. SRI BABU NAYAKA
S/O SRI DASTAGIR
MAJOR
R/AT NO.1-1-265/22 A1
VIDYANAGAR, STATION ROAD
RAICHUR - 584 103

E.P.No.200002/2018

4. SRI AMARESH MATUR
S/O SRI SHARANAPPA
MAJOR
R/AT NEAR ESHWAR TEMPLE
MATURU, MATURU POST
TALUK SINDHANOUR
DISTRICT RAICHUR - 584 128
 5. SRI BASAVANA GOUD
S/O SRI MUDAKANGOUDA
MAJOR
R/AT NO.83, KURKUNDA
KURKUNDA POST
TALUK SINDHANOUR
DISTRICT RAICHUR - 584 128
- ...RESPONDENTS

(BY SRI PRABULING.K.NAVADGI, SENIOR COUNSEL FOR
SRI VARUN J.PATIL, ADVOCATE FOR R1;
SRI A.S.PONNANNA, SENIOR COUNSEL FOR
SRI DARSHAN.L. & SMT.SANJANA.S.UMESH, ADVOCATES FOR
R3; R2, R4, R5 HELD SUFFICIENT V/O/DATED 26.03.2019;
SRI RAVI H.K., ADVOCATE FOR IMPEADING APPLICANT]

THIS ELECTION PETITION IS FILED UNDER SECTION 81 OF
THE REPRESENTATION OF THE PEOPLE ACT, 1951 PRAYING TO
DECLARE THAT THE RESULT OF ELECTION OF RESPONDENT NO.1
AS RETURNED CANDIDATE TO FILL THE SEAT FOR 059 MASKI (ST)
ASSEMBLY CONSTITUENCY UNDER SECTION 100(1)(d)(ii)(iii) &
(iv) OF THE REPRESENTATION OF THE PEOPLE ACT AS NULL AND
VOID ETC.

THIS ELECTION PETITION PERTAINING TO KALABURAGI
BENCH COMING ON FOR ORDERS ON INTERLOCUTORY
APPLICATIONS THIS DAY, THE COURT SITTING AT BENGALURU
BENCH **THROUGH VIDEO CONFERENCE** MADE THE FOLLOWING:

**ORDER ON I.A.No.5/2019, I.A.No.6/2019 &
I.A.No.3/2020**

Respondent No.1 has filed I.A.No.5/2019 and
I.A.No.3/2020 under Sections 81, 83, 86 and 87 of the

Representation of the People Act, 1951 (for short 'RP Act') read with Order VI Rule 16 of the Code of Civil Procedure, 1908 (for short 'CPC') for striking out all the sentences of paragraph Nos.9, 10, 11(a), 11(c), 11(e), 11(f), 11(h), 11(i), 12 and prayer at (B) of paragraph No.20 and prayer (C) of the election petition respectively.

2. Respondent No.1 further filed J.A.No.6/2019 under Order VII Rule 11 of CPC seeking rejection of the election petition.

3. Election petitioner has filed objections to the aforesaid applications.

4. In 2018 General Legislative Assembly Election for 059 Maski Constituency, the petitioner and respondent Nos.1 to 5 submitted their nominations. The election was conducted on 12.05.2018. The counting of the votes was held on 15.05.2018. On 15.05.2018 respondent No.1 was declared elected with 60,387 votes the highest one. The petitioner secured 60,174 votes. Respondent No.2 secured 11,392

votes and remaining votes were shared by respondent Nos.3 to 5.

5. The petitioner filed the above election petition seeking the following reliefs:

- A) Declare that the result of election of respondent No.1 as returned candidate to fill the seat for 059 Maski (ST) Assembly Constituency under Section 100(1)(d)(ii)(iii) & (iv) of the Representation of the People Act as null and void.
- B) ***Declare that the result of the election so far it concerns Respondent No.1 has been materially affected by reception of 512 votes which are void under Section 100(1)(d)(ii)(iii) & (iv) read with Section 62(4) of the Representation of the People Act, 1951.***
- C) Declare that the Petitioner is duly elected to the 059 Maski (ST) Assembly Constituency under Section 101 of the Representation of the People Act, 1951;
Or
Declare that ***in view of reception of void votes, the result of election for 059 Maski***

E.P.No.200002/2018

(ST) Constituency as void and direct to re-do the elections for 059 Maski (ST) constituency a fresh.

D) Grant such other relief or consequential reliefs as this Hon'ble Court deems fit in the facts and circumstances of the case in the interest of justice and equity.

E) Award cost of this Petition.

The prime allegations are that the election was materially affected by corrupt practice adopted by respondent No.1 and his agents by way of double voting and voting by impersonation.

6. i) In paras 9 to 14 of the petition, the petitioner claims that names of 213 voters appeared simultaneously in two polling stations and they casted double votes. Thus, there was duplication. He enlisted those voters in a tabular form at Sl.Nos.1 to 254 in para 11(c) of the petition.

ii) In para 11(h) of the petition, the petitioner claims that Preeti daughter of respondent No.1 Mr.Prathap Goud Patil and one Snehalatha daughter of Sri Bharath Singh were

residing abroad. But still they have purportedly casted their votes in polling booth Nos.86 at Sl.Nos.74 and 363 respectively. Therefore, there was impersonation.

iii) In para 11(i) the petitioner claims that names of two dead persons namely Pampanna and Udaykumar appeared in the electoral roll of Booth No.86 at Sl.No.639 and Booth No.87 at Sl.No.682 respectively and they purportedly casted their votes in those polling booths and thereby there was impersonation. Thus, according to the petitioner, duplicate votes, dead persons' votes and absentees votes were void and they were casted in favour of respondent No.1.

iv) In para 11(e), the petitioner claims that inclusion of double names in two polling stations was at the behest of respondent No.1, **his agents** and **followers** by adopting corrupt practice. Therefore, he alleged that the election of respondent No.1 was materially affected by reception of 512 void votes. Thus he sought declaration under Sections 100(1)(d)(ii)(iii) & (iv) of RP Act that election of respondent No.1 was null and void, that election of respondent No.1 was

materially affected by reception of void votes and that the petitioner is duly elected to the said constituency or declaration that in view of reception of void votes result of the election to the said constituency is void and to redo election.

7. Respondent No.1 in his applications I.A.Nos.5 and 6 of 2019 and I.A.No.3/2020 seeks striking out the pleadings as aforesaid and rejection of the petition on the following grounds:

- (i) Allegations in the petition are vague.
- (ii) Without furnishing material facts and particulars, the election petition is filed. Therefore, the petition is the abuse of the process of Court.
- (iii) The petitioner has failed to disclose the source of information of alleged corrupt practice.
- (iv) Verifying affidavit is not in accordance with Form 25 as per Rule 94A of the Conduct of the Elections Rules, 1961 ('the Rules' for short).
- (v) Under Section 100 of the RP Act and as per the election laws, the petitioner cannot maintain election petition

on the ground of error in the electoral roll. Therefore, there is abuse of the process of the Court and the election petition is prejudicial to fair trial.

(vi) One cannot presume that alleged void votes were casted in favour of respondent No.1 only.

8. The applications are opposed on the following grounds:

(i) The petitioner is required to state only the material facts and not material particulars.

(ii) The petitioner pleaded those material facts and substantiated them by producing documents regarding duplicate votes, impersonation and casting of the votes in the name of dead persons.

(iii) Section 52 of RP Act bars a person voting in two booths or voting twice in the same booth.

(iv) Section 100(d)(iii) of the RP Act permits the election petitioner to question the election on the ground of improper reception of votes even without challenging the voters list.

E.P.No.200002/2018

(v) Corrupt practice is apparently committed by respondent No.1 and his agents as no other person can vote in the name of daughter of respondent No.1.

(vi) The petition fairly discloses cause of action and there is no vagueness in the petition averments.

(vii) The applications are only an attempt to stall the proceedings.

(viii) Order VII Rule 11 CPC does not contemplate rejection of the plaint based on the pleadings of respondent No.1.

9. Reiterating the grounds stated in the applications, Sri Prabhuling K Navadgi, learned Senior Counsel appearing for Sri Varun J.Patii, learned Advocate on record for respondent No.1 seeks striking of the pleadings, rejection of the election petition.

10. In support of his arguments, he relies upon the following judgments:

- 1) **Navjot Singh Sidhu Vs. Om Prakash Soni & Ors.**
[(2017) 4 SCC 348]
- 2) **Anil Vasudev Salgaonkar Vs. Naresh Kushali Shigaonkar** [(2009) 9 SCC 310]

- 3) **Jitendra Bahadur Singh Vs. Kirshna Behari & Ors.**
[1969(2) SCC 433]
- 4) **R.P.Moidutty v. P.T. Kunju Mohammad**
[(2000) 1 SCC 481]
- 5) **Prakash Khandre v. Dr. Vijay Kumar Khandre & Ors.** [2002 (5) SCC 568]
- 6) **Udhav Singh v. Madhav Rao Scindia**
[(1977) 1 SCC 511]

11. Reiterating the contentions raised in the statement of objections, learned Counsel for the petitioner relies on the following judgments:

- 1) **Virender Nath Gautam vs. Satpal Singh**
[(2007) 3 SCC 517]
- 2) **D.Ramachandran v. R.V.Janakiraman**
[(1999) 3 SCC 267]

12. Adding to the grounds urged by learned Counsel for the petitioner, Sri A.S.Ponnanna, learned Senior Counsel appearing for respondent No.3 further submits that Order VII Rule 11 CPC does not contemplate rejection of the plaint based on the pleadings of respondents/defendants. He submits that in considering the application under Order VII Rule 11 CPC only the petition averments have to be looked into.

13. In support of his contentions, he relies upon the following judgments:

- 1) **Mayar (H.K.) Ltd. v. Owners & Parties Vessel M.V. Fortune Express**
[(2006) 3 SCC 100]
- 2) **Ajay Arjun Singh v. Sharadendu Tiwari**
[(2016) 15 SCC 219]
- 3) **P.V.Guru Raj Reddy v. P.Neeradha Reddy**
[(2015) 8 SCC 331]

14. If respondent No.1/applicant succeeds in I.A.No.6/2019 i.e., for rejection of plaint, the other two applications, namely I.A.No.5/2019 and I.A.No.3/2020 for striking down of the pleadings in the petition do not survive for consideration. Otherwise they are required to be considered. Therefore, I.A.No.6/2019 is taken up first for consideration.

15. Respondent No.1 is seeking rejection of the petition invoking Order VII Rule 11 CPC, which reads as follows:

"11. Rejection of plaint—The plaint shall be rejected in the following cases:—

- (a) **where it does not disclose a cause of action;**
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to

correct the valuation within a time to be fixed by the Court, fails to do so;

- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

- (e) Where it is not filed in duplicate;

- (f) Where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

16. According to the applicant since the pleadings in the petition are not in compliance with Section 83 of the RP Act, Rule 94A and Form No.25 of the Rules, the petition is barred by law. Therefore, the Court has to examine whether the application is covered under Order VII Rules 11(a) and (d) of CPC.

17. Petitioner sought declaration that election of respondent No.1 as returned candidate is void on the ground that the same has been materially affected by reception of

512 void votes. In the prayer, it is specifically stated that such declaration is sought under Section 100(i)(d)(ii)(iii) & (iv) read with Section 62(4) of the RP Act.

18. Section 100 of the RP Act reads as follows:

"100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963)]; or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in ***so far as it concerns a returned candidate***, has been ***materially affected***—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any ***corrupt practice committed in the interests of the returned candidate by an agent*** other than his election agent, or
 - (iii) by the improper reception, refusal or rejection of any vote or the ***reception of any vote which is void***, or
 - (iv) by any ***non-compliance with the provisions of the Constitution or of this Act*** or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

[***]

- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void."

19. i) Sub-section (1) to Section 100 of the RP Act deals with the provision that enables the Court to declare the election of the returned candidate to be void.

ii) Section 100(2) of the RP Act confers discretion on the Court, even on finding the agent of returned candidate guilty of corrupt practice, to hold the election of returned candidate not void, if the Court is satisfied that returned candidate was not party to such corrupt practice or such corrupt practice by his agents was contrary to the orders and without his consent or his election agent or despite he taking all reasonable means to prevent them.

20. In the case on hand, the petitioner alleges that 512 votes were duplicated in same polling station or different polling stations, votes of two non-resident Indians and two dead persons were casted by impersonation. According to him those duplicated votes and votes casted by impersonators were void and they were casted in favour of respondent No.1.

21. With regard to who indulged in such acts the allegations are found only in para 11(e) of the election petition. The allegations in paras 11(g) to 11(i) deal with casting of the votes of non-resident Indians and dead persons by impersonation. Even in those paragraphs it is not stated who impersonated them and who facilitated those impersonators to get the names of those dead persons in the voters list and to caste their votes.

22. In this context, it is relevant to refer to Section 83 of the RP Act.

- "83. Contents of petition.—** (1) An election petition—
- (a) shall contain a concise statement of the **material facts on which the petitioner relies;**
 - (b) **shall set forth full particulars of any corrupt practice** that the petitioner alleges, including

as full a statement as possible of ***the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice;*** and

- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, ***the petition shall also be accompanied by an affidavit in the prescribed form*** in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

23. A perusal of Section 83(b) of the RP Act makes it clear that when the election petition is filed alleging corrupt practice or that the election of the returned candidate was materially affected by some corrupt practice, the petitioner has to include the ***full statement as possible of the names of the parties alleged to have committed such corrupt practices, date and place of the commission of each such practice.***

24. Secondly, the *proviso* to Section 83(1) of the RP Act requires that the petitioner in such case to file the affidavit in the prescribed form in support of the allegations of corrupt practice and particulars thereof. Form of such affidavit

E.P.No.200002/2018

is prescribed under Rule 94A of the Rules which reads as follows:

"94A. Form of affidavit to be filed with election petition.— The affidavit referred to in the proviso to sub-section (1) of section 83 **shall** be sworn before a magistrate of the first class or a notary or a commissioner of oaths and **shall be in Form 25.**"

Thus it is clear that the affidavit supporting the election petition where the allegations of corrupt practices are made shall be in Form 25. The word used in Rule 94A of the Rules '**Shall**'. Therefore, it is mandatory.

25. Form 25 referred to in rule 94A of the Rules is as follows:

"[FORM 25
(see rule 94A)

AFFIDAVIT

I,, the petitioner in the accompanying election petition calling in question the election of Shri/Shrimati..... (respondent No..... in the said petition) make solemn affirmation/oath and say—

(a) that the statements made in **paragraphs of the accompanying election petition** about the commission of the corrupt practice of* and the particulars of such corrupt practice mentioned in **paragraphs** of the same petition and in paragraphs of the Schedule annexed thereto are **true to my knowledge;**

(b) that the statements made **in paragraphs of the said petition** about the commission of the corrupt practice of* and the particulars of such

E.P.No.200002/2018

corrupt practice given in **paragraphs** of the said petition and in paragraphs of the Schedule annexed thereto are **true to my information**;

(c)

(d)

etc.

Signature of deponent

Solemnly affirmed/sworn by Shri/Shrimati..... at
..... this Day of 20.....

Before me, Magistrate of the first class/
Notary/Commissioner of oaths]

*Here specify the name of the corrupt practice]."

26. A perusal of Form 25 of the Rules makes it clear that there shall be two paragraphs in the affidavit named as (a) & (b). Para (a) of the affidavit shall specify the paragraph numbers of the petition containing the knowledge means personal knowledge of the petitioner regarding corrupt practice and particulars of corrupt practice. Para (b) of Form 25 of the Rules prescribes the petitioner to make the statement specifying the paragraphs which contain the corrupt practice and the particulars of corrupt practice which are based on his information.

27. Therefore, this Court has to see whether there is compliance of Rule 94A and Form 25 of the Rules and Section 83 of the RP Act.

28. Sri A.S.Ponnanna, learned Senior Counsel appearing for respondent No.3 relies upon the judgment in **P.V.Guru Raj Reddy's** case referred to *supra* to contend that while considering the application under Order VII Rule 11 of CPC, only the pleadings in the plaint has to be read as a whole and not written statement of the defendant. Absolutely, there cannot be any dispute with regard to that proposition. Order VII Rule 11 of CPC provides another ground for rejection of plaint namely where the plaint appearing from the statement in it appears to be barred by law. The petition is sought to be rejected for non compliance of Section 83 of the RP Act and Rule 94A and Form 25 of the Rules also.

29. There cannot be any dispute that while considering the application under Order VII Rule 11 of CPC, the Court has to be circumspect and not to look into the

defence of the defendant. But, at the same time if by the statement made in the petition itself appears to be barred by law or does not disclose cause of action, the Court is bound to exercise the power under Order VII Rule 11(d) of CPC to nip the litigation at the bud. Otherwise ultimately the case may fail after several years causing avoidable diversion of valuable time and resources of the Court and parties.

30. It was contended that 512 votes were void votes and the margin of votes between the petitioner and respondent No.1 is only 213 votes. Therefore, the election itself was void.

31. Section 100(1)(d) of the RP Act does not provide for declaration of the entire election as void on the sole ground of reception of void votes. But that should have some nexus with the election of the returned candidate. It should be alleged that election of the returned candidate was materially affected by improper reception of void votes. Therefore, unless the material facts and particulars regarding corrupt practice as prescribed under Section 83 of the RP Act

are pleaded and the particulars of knowledge and information of the petitioner with regard to the alleged corrupt practice as prescribed under Rule 94A of the Rules and in the affidavit in Form No.25 of the Rules were stated, the petition under Section 100(1)(d)(iii) of the RP Act cannot be entertained.

32. Therefore, even assuming that 254 voters got themselves registered in two polling stations or duplicated themselves, the preparation of election roll was not within the hands of respondent No.1. The petitioner in the petition has not stated who prepared those voters roll with double registration of such voters.

33. In para 11(e) of the petition, general allegations are made to the effect that respondent No.1, his agents and followers have intentionally incorporated double votes in two polling stations and succeeded to get double votes being casted in favour of respondent No.1. At least the names of those agents are not forthcoming in the said paragraphs. It is not even stated that respondent No.1 wielded his influence

over officials who said to have prepared those voters list. Those officials were not named in the petition.

34. In **Udhav Singh's** case referred to *supra*, the Hon'ble Supreme Court has held that the material facts constituting a complete charge of corrupt practice has to be pleaded, against whom such allegations of corrupt practice were made have to be impleaded in the case otherwise, the petition is liable to be rejected under Order VII Rule 11 of CPC.

35. Though, it was contended that the petitioner is required to submit only the material fact and not material particulars, referring to several earlier judgments, the Hon'ble Supreme Court in para 58 of the judgment in **Anil Vasudev Salgaonkar's** case referred to *supra*, held as follows:

"58. There is no definition of "material facts" either in the Representation of Peoples Act, 1951 or in the Code of Civil Procedure. In a series of judgments, this court has laid down that all facts necessary to formulate a complete cause of action should be termed as "material facts". **All basic and primary facts which must be proved by a party to establish the existence of cause of action or defence are**

material facts. "Material facts" in other words mean the entire bundle of facts which would constitute a complete cause of action. This court in Harkirat Singh's case (supra) tried to give various meanings of "material facts". The relevant paragraph 48 of the said judgment is reproduced as under:-

"48. The expression 'material facts' has neither been defined in the Act nor in the Code. According to the dictionary meaning, 'material' means 'fundamental', 'vital', 'basic', 'cardinal', 'central', 'crucial', 'decisive', 'essential', 'pivotal', 'indispensable', 'elementary' or 'primary'. [Burton's Legal Thesaurus, (Third Edn.); p.349]. The phrase 'material facts', therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, 'material facts' are facts upon which the plaintiff's cause of action or the defendant's defence depends. What particulars could be said to be 'material facts' would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that **all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading** by the party."

(Emphasis supplied)

Reading of the aforesaid judgment makes it clear that material facts means all basic facts which must be proved at trial to establish existence of a cause of action which must enable the respondent to make available his defence. Unless it is stated in the petition as to who prepared the voters list, duplicated the votes or facilitated those persons to caste their votes by impersonation, it cannot be said that the material fact were disclosed. Respondent No.1 will not get a chance to

E.P.No.200002/2018

meet effectively such vague allegations. Further as required under Section 123 of the RP Act, petitioner shall plead as much as possible full statement of facts or the names of the parties alleged to have committed corrupt practice, date and place of commission of such offences.

36. In this case, names of the persons who allegedly committed those corrupt practice, (except saying respondent No.1 or his agents) are conspicuously absent. Respondent No.1 was not the person in charge of preparing the voters list, names of the officers or officials who were in charge of the voters list or verifying the identity of voters at the time of polling were not disclosed in the petition.

37. The verifying affidavit filed in support of the petition reads as follows:

"Form No.25
(as per Rule 94A)

IN THE HIGH COURT OF KARNATAKA AT KALABURGI
ELECTION PETITION NO.200002/2018

BETWEEN:

Sri. Basanagouda Turvihal ... Petitioner

And:

Sri. Pratapagouda Patil and ors. ... Respondents

AFFIDAVIT

I, Basanagouda TurvihaI, aged about 55 years, S/o. Somalingappa, Residing at TurvihaI, Sindanoor Taluk - 584 132, now come down to Kalaburagi, do hereby, solemnly affirm and state on oath as follows:

1. I am the petitioner in the accompanying election petition calling in question the election of Sri Pratapagouda Patil, the Respondent No.1 in the above petition.
2. That the statement made in paragraphs 1 to 11 of the accompanying election petition about the commission of the corrupt practice of double voting, received votes of dead persons, received votes of person residing in abroad and particulars of such corrupt practice mentioned in **paragraphs 11 of the same petition and in paragraphs 1 to 23 thereto are true to my knowledge;**
3. That the statements made in paragraphs 01 to 23 of the said petition about the commission of the corrupt practice of double voting, received votes of dead persons, received votes of person residing in abroad and particulars of such corrupt practice given in **paragraphs 11 to 22 of the said petition thereto are true to my information.**
4. I submit that the Annexures 'A' to 'J' are true copies of the originals.

I, Basanagouda TurvihaI, the deponent above name hereby verify and declare that this is my name and signature and the contents of the affidavit are true to the best of my knowledge, information and belief.

Name of Corrupt Practices

1. Double Voting

E.P.No.200002/2018

2. Received votes of dead persons,
3. Received votes of person residing in abroad

Identified by me

Deponent

Sd/-

Advocate
Kalaburagi, Dated 28 JUN 2018
No. of Corrections (one)"

38. Para 2 of the affidavit states that the allegations in paragraphs 1 to 23 are known to the best of his knowledge. Again in para 3 of the verifying affidavit, he states that the statements in paragraphs 11 to 22 are to the best of his information. The petitioner does not specifically state which allegations are his personal or direct knowledge and which of them are based on his information. Reading of paragraphs 2 and 3 of the affidavit shows that declaration with regard to his knowledge and information regarding corrupt practice are contrary to Form 25 and Rule 94A of the Rules and Section 83 of the RP Act.

39. In **Anil Vasudev Salgaonkar's** case referred to *supra*, it was held that all the primary facts to establish cause of action or his defence must be pleaded in the context of a charge of corrupt practice. It would mean that the basic

facts which constitute the ingredients of the particular corrupt practice alleged must be specified in order to succeed on the charge. It was further held that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead **even a single material fact** would amount to disobedience of the mandate of Section 83(1)(a) of the RP Act and petition is liable to be rejected under Order VII Rule 11 of CPC.

40. In **Jitendra Bahadur Singh's** case referred to *supra*, the Hon'ble Supreme Court set aside the order of the trial Court to recount of the votes on the ground that the trial Court overlooked the importance attached to the secrecy of the ballot papers. In this case also it is not stated on what basis petitioner claims that those 512 alleged void votes had gone to the petitioner only.

41. In **R.P.Moidutty's** case, the Hon'ble Supreme Court while considering required pleadings in the election petition, in para 14 of the judgment, held as follows:

"14. It is basic to the law of elections and election petitions that in a democracy, **the mandate of the people as expressed at the hustings must prevail and be**

respected by the Courts and that is why the election of a successful candidate is not to be set aside lightly. Heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate **to make out a clear case** for such relief both **in the pleadings** and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear-cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. [See: Ram Chandra Rai vs. State of M.P. (1970) 3 SCC 647; Manphul Singh vs. Surinder Singh AIR 1973 SC 2158; Rahim Khan vs. Khurshid Ahmed and others AIR 1975 SC 290; Bir Chandra Barman vs. Anil Sarkar AIR 1976 SC 603; Lakshmi Raman Acharya vs. Chandan Singh AIR 1977 SC 587 and Amolak Chand Chhazad vs. Bhagwandas Arya AIR 1977 SC 813]. **The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice.** Under Section 83 of the Act ordinarily it would suffice if the election petition contains a concise statement of the material facts relied on by the petitioner, but **in the case of corrupt practice the election petition must set forth full particulars thereof including as full a statement as possible of (i) the names of the parties alleged to have committed such corrupt practice, (ii) the date, and (iii) place of the commission of each such practice.** An election petition is required to be signed and verified in the same manner as is laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. However, **if the petition alleges any corrupt practice then the petition has additionally to be accompanied by an affidavit in Form No. 25 prescribed by rule 94A of the Conduct of Elections Rules, 1961** in support of the allegations of such corrupt practice and the particulars thereof. Thus, an **election petition alleging commission of corrupt**

practice has to satisfy some additional requirements, mandatory in nature, in the matter of raising of the pleadings and verifying the averments at the stage of filing of the election petition and then in the matter of discharging the onus of proof at the stage of the trial."

(Emphasis supplied)

42. It was held that names of the parties, date and place of commission of corrupt practice has to be stated in the petition and the petition has to be supported by verifying affidavit in Form 25 prescribed by Rule 94A of the Rules and that was mandatory in nature.

43. In ***Navjot Singh Sidhu's*** case referred to *supra*, it was held that for declaring the petitioner as elected candidate, the petitioner has to establish that the void votes were obtained by the returned candidate by corrupt practice or the petitioner has received majority of valid votes.

44. Learned Counsel for the petitioner heavily relying on the judgment of the Hon'ble Supreme Court in ***Virender Nath Gautam's*** case referred to *supra* contended that the material particulars are different from material facts and the petitioner need not mention in the petition source of information. In that case, the election was challenged on

different ground and not on the ground of corrupt practice. Therefore, the judgment in **Virender Nath Gautam's** case was distinguished in the subsequent judgment in **Navjot Singh Sidhu's** case.

45. In para 9 of **Navjot Singh Sidhu's** case, it was held as follows:

"9. Virender Nath Gautam: dealt with an election petition that did not have any allegation of corrupt practice and therefore the contents thereof were examined in the context of the requirement under Section 83(1)(a) and not Section 83(1)(b) of the 1951 Act. In case of an election petition founded on allegations of corrupt practice not only the "material facts" have to be pleaded but even the full particulars thereof have to be furnished at the stage of filing of the election petition itself. This is specifically provided for in Section 83(1)(b) of the RP Act."

(Emphasis Supplied)

Thus, as per the law laid down by the Hon'ble Supreme Court in **Navjot Singh Sidhu's** case in an election petition filed on the allegation of corrupt practice, not only the material facts have to be pleaded, but even full particulars thereof have to be furnished at the stage of filing of election petition itself as it is specifically provided under the provisions of the RP Act.

33

E.P.No.200002/2018

The other judgments relied upon by learned Counsel on both side are not applicable.

46. Thus, it is clear that the petition lacks material facts and particulars and non-compliant of Section 83(1)(b) of the RP Act, Rule 94A and Form No.25 of the Rules. Thereby barred under the said provisions and does not disclose cause of action. Therefore, I.A.No.6/2019 filed by respondent No.1 under Order VII Rule 11 of CPC for rejection of the petition is allowed. Consequently, the petition is rejected.

In view of rejection of the petition, I.A.No.5/2019 and I.A.No.3/2020 do not survive for further consideration and disposed of accordingly.

All other pending IAs stood disposed of.

**Sd/-
JUDGE**

KSR

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ASSISTANT REGISTRAR
High Court of Karnataka
Kalaburagi Bench, Kalaburagi-585103

22/12/2019 J/c 2/12/2020

By order,

(B.C. PATRA)

Secretary

Election Commission of India

(K.M. PRANESH)

Deputy Chief Electoral Officer

D.P.A.R (Elections).